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UNCLAS SECTION 01 OF 06 GENEVA 000973

FOR EEB/TTP/MTA/MTAA  
PASS USTR FOR JGRIER, AWINTER AND MPAGAN  
USDOC/4110 FOR BWOODWARD, KKELLY, JPRUITT  
TREASURY FOR GEARP

SENSITIVE BUT UNCLASSIFIED  
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TAGS: [ETRD](#) [WTRO](#) [ECON](#)  
SUBJECT: CHINA, BUY AMERICAN PROMINENT AT OCTOBER  
GOVERNMENT PROCUREMENT SESSIONS

Ref: A) Geneva 400 B) Riyadh 1375

¶1. SBU) SUMMARY: China's WTO Agreement on Government Procurement accession process Garnered the most attention during the October 7, 2009 WTO Committee on Government Procurement session and related bilateral meetings on Oct. 5-6. China circulated a report on its progress in its accession negotiations to the GPA, and promised to submit a revised market access offer in ¶2010. Parties showed continued interest in the status of the implementation of the "Buy American" provisions in the American Recovery and Reinvestment Act of 2009. The status of Armenia, Jordan and Saudi Arabia Accession processes were discussed during The meetings, and a positive bilateral meeting with the European Communities gave the U.S. delegation some reason to believe that progress may be possible on the renegotiation of the GPA. The U.S. delegation met bilaterally with Armenia, China, Jordan, Saudi Arabia, the EC, Japan and Norway. The next committee meetings will take place the week of December 7. End summary.

Buy American Issue Again on Agenda  
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¶2. (U) As in previous sessions (ref A), the Buy American provisions of the American Recovery and Reinvestment Act (ARRA) generated much discussion during the October 5-7 informal sessions of the WTO Committee on Government Procurement And related bilateral meetings. During The plurilateral sessions on October 7, the EC and Swiss delegations expressed concern with the lack of final regulations and OMB guidance on the implementation of the "Buy American" provisions in ARRA.

The Israeli representative also noted that his country awaited the final regulations and OMB guidance. The U.S. delegation reiterated that the interim implementing regulations and OMB guidance are in effect and ensure that GPA parties' rights under the Agreement remain protected. Committee Chair Nicholas Niggli thanked the United States for its useful replies and remarked that the ability of parties to discuss the stimulus package demonstrated the value of the Government Procurement Agreement (GPA) as an instrument.

#### Accession Progress Mixed

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13. (U) China: Fulfilling a commitment made at the U.S.-China Strategic and Economic Dialogue meetings in July, during the Committee session, China presented a report outlining elements of a revised offer that it intends to submit in 2010 limited to expansion of central government procurement. China also included in its document a list of nine factors complicating China's efforts to submit a revised offer (it has been nearly two years since China's initial market access offer).

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The reasons China cited for its delay in submitting a revised offer expanded on those stated before ? that provincial government procurement officials are unfamiliar with the GPA, and while covered by the Government Procurement Law, need time to decide whether to include entities in the revised offer, that Chinese procurement law does not apply to state-owned enterprises, and China needs more time and domestic political buy-in to reconcile Chinese procurement law with the GPA. China said that they realize more entities at the central level government will need to be covered; that provincial governmental entities and state-owned enterprises will need to be covered; that more goods and services will need be covered; and that threshold levels will need to be lowered. In its 2010 revised market offer, China may add more central government entities and more subordinate entities, substantially lower the threshold levels, and expand coverage of goods and services coverage. Despite the fact that China is only committing to improving one aspect of its offer in its next revision, parties still expressed appreciation to China for outlining a revised offer, and emphasized the need for China to submit its revised offer as soon as possible.

14. (SBU) China cont'd: In a bilateral meeting, the Chinese delegation stayed very close to the text of the document that was subsequently circulated in the plurilateral. They noted that the State Council was soliciting comments

on draft regulations to implement the revised Tendering and Bidding Law, and provided the website where the solicitation was posted. In response to a U.S. question, China indicated that the Ministry of Finance was still working on the draft implementing regulations for the Government Procurement Law. Once they are submitted, and approved by the State Council, they will be posted for public comments, hopefully before the end of 2009.

15. (SBU) The Chinese delegation stated that relevant ministries were still working on regulations to define what is a domestic product. In particular, ministries must determine the standards for determining what constituted domestic production in China. Currently, China only has standards and procedures for imported products (products produced outside China and subject to China Customs), based on a December 2007 measure.

The U.S. delegation explained how this issue is of great importance to U.S. multinationals, including concerns with how it will affect determinations relating to

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innovative indigenous products. During the July Strategic and Economic Dialogue discussions, China committed to treat, under its Government Procurement Law, products produced in China by foreign invested enterprises the same as products produced in China by Chinese enterprises. The U.S. delegation would like China to confirm its Strategic and Economic Dialogue commitment in a regulation as soon as possible. While noting that the two sides had established a good channel of communication, China expressed concern that spending on other government procurement issues in other fora) will delay China's GPA accession.

16. (SBU) Armenia: The U.S. delegation met bilaterally with Avetis Hovhannisyan, Armenia's Permanent Representative to the WTO, to discuss his country's initial GPA offer. Hovhannisyan explained that a delegation from capital that includes procurement experts was unable to attend, but offered to relay questions to Yerevan. The U.S. delegation noted to Hovhannisyan that the initial offer appeared very favorable, that it would send him its comments and requests relating to the offer and expected, with some additional work, that Armenia's accession could proceed quickly. Other delegations echoed these sentiments in the plurilateral and requested that Yerevan send a delegation to the GPA Committee session in December.

17. (SBU) Saudi Arabia: In a bilateral meeting, Saudi representatives continued to use the delay in approval of the revised text of the GPA as a reason why Saudi Arabia has failed to initiate its accession to the GPA. Under Saudi Arabia's WTO commitment, it should have begun its GPA accession in 2006. The U.S. delegation continued to respond to Saudi Arabia that this is not an adequate excuse and encouraged the Saudis to move forward with an initial market access offer. The Saudis thought statements urging GPA accession by AUSTR Wilson during his upcoming visit (ref B) to Saudi Arabia could help accelerate the process. The Saudis also promised to consider whether a workshop offered by the Department of Commerce on the benefits of GPA membership would assist accession efforts.

18. (SBU) Jordan: The bilateral with Jordan provided little room for optimism. The Jordanian Permanent Representative doubted that Jordan would submit a revised offer this year. In addition, he complained that the Jordanian armed forces still

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resisted their inclusion under GPA. He also indicated that Jordan was studying its SME program, and may be able to revise the SME proposal that it include in its revised offer.

19. (U) Other countries: The Kyrgyz Republic did not send a delegation, but submitted updated responses to the checklist of issues, its first action since it suspended plurilateral GPA negotiations in 2003. The Secretariat reported on technical assistance activities designed to increase interest in accession to the GPA. The Swiss noted increased interest in the GPA due to new FTAs including government procurement provisions.

Coverage Issues -- Search for  
Flexibility and Compromise

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110. (SBU) The EC and U.S. delegations held a productive bilateral. The EC expressed its disappointment with the delay in the final implementing measures for the "Buy American" provisions in ARRA. The U.S. delegation said it hoped that final implementing regulations would be ready by the end of October, but there was no guarantee. The EC noted that it was receiving complaints from European firms regarding the inverted corporations provision in pending U.S. legislation, which would prohibit contract awards to former domestic firms that have moved their incorporations to tax havens to avoid U.S. taxes. The U.S.

delegation explained that the Administration is in discussions with the Hill on this subject.

¶11. (SBU) The EC expressed a desire to kick start the renegotiations of the GPA and expressed the hope that the two sides could find a way forward on the outstanding issues. The United States agreed noting that the revised text is becoming dated and will hit the three-year mark in December. The EC acknowledged that the United States cannot accept the EC's revised market access offer, and indicated that it has some flexibilities, including returning to its initial offer. The EC would like to see more from the United States' own revised market access offer. The U.S. indicated it would consider whether it could further clarify its revised offer and perhaps add to it. The EC did not disagree with the U.S. observation that the EC has vulnerabilities with the more than 500 modifications in its existing coverage, which have never been notified, and would need to be addressed in a final

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package. The EC would also want a rendezvous clause in the final package that would provide for future market access negotiations and a process for monitoring discriminatory measures. The EC proposed that the two sides meet for a more lengthy bilateral on the margins of the December government procurement session.

¶12. (SBU) In a bilateral with Norway, it appears that the two sides may be close to agreement on coverage. They agreed to meet again in December to see what they would need to reach agreement.

¶13. (SBU) In another bilateral, the Japanese delegation suggested that it was open to submitting an expanded coverage offer, possibly including two new designated cities (which were not named). The Japanese also provided information to clarify that its proposed revisions related to the Japan Railway Construction, Transport and Technology Agency (JRJT) would not reduce GPA coverage.

¶14. (SBU) The Committee discussions on market access offers confirmed the sense from bilaterals that agreement may be possible. Singapore stated that it could be flexible on its request for technical revisions to the GPA as long as parties achieved improved market access. In other matters, a mid-term review of the status of the GPA renegotiation process being championed by the

Swiss and EC delegations was delayed due to U.S., Japanese, Canadian and Israeli concerns that the project would not advance the renegotiation effort and was misleading since the terms of reference of the review did not include a comparison to existing market access coverage, but rather would only look at initial and/or revised offers. The Secretariat will prepare a new draft of the terms of reference. The Committee agreed to compose a working group that would meet on the margins of future Committee meetings to study government procurement statistics and methodologies for improving those statistics. The United States, the EC and others have acknowledged the difficulty of identifying the country of origin for significant segments of respective government contracts.

U.S. Delegation  
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¶15. (U) The United States delegation was led by Jean Heilman Grier, USTR

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senior procurement negotiator, and included Robert Kasper from USTR/Geneva, Katrice Kelly and Brian Woodward of the Department of Commerce, and Nathan Lane of the Department of State. This cable has been cleared by all of the Washington-based delegation members.  
SHARK